IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 223 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME-TAX

Versus

B R PATEL

Appearance:

1. INCOME TAX REFERENCE No. 223 of 1994
MR MIHIR JOSHI with MR MANISH R BHATT for Petitioner
MR SR DIVETIA for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 07/11/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE D.A.MEHTA)

At the instance of the Commissioner, the Tribunal has referred the following question pertaining to assessment year 1987-88 :-

> "Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the assessee who was engaged in a profession as consulting cardiologist could be said to be carrying on a business as an industrial undertaking, which produced an article of things and was thus entitled to investment allowance u/s.32A of the Act on the new machinery installed in his clinic ?"

2. We have heard Mr Mihir Joshi and Mr SN Divetia for the respective parties. Our attention was invited by Mr Divetia to the fact that the Tribunal has relied upon its own decision in assessee's own case for assessment year 1981-82 and that the revenue has accepted the said decision. In view of this peculiar fact situation it was urged that the revenue must not be permitted to contend to the contrary in case of this assessee atleast. Mr Mihir Joshi relied upon 225 ITR 936, a decision of this Court, wherein the Court has after laying down the principles as to what would constitute business in case of a professional directed the Tribunal to adjust its decision under Section 260(1) of the Act. It was, therefore, submitted that in the present reference also we must likewise direct the Tribunal to apply those principles after ascertaining the facts which may come on record.

3. In our view, it is not necessary to remand this matter in light of the peculiar facts and circumstances that have come on record. Once the revenue has accepted that this particular assessee is entitled to investment allowance in assessment year 1981-82, and there are no distinguishing features placed on record to take any other view, it is not necessary to remand the matter as requested by the revenue. In view of the factual position in relation to earlier assessment year which has come on record, we decline to answer the question referred to us.

4. The reference stands disposed of accordingly with no order as to costs.

(M.S. Shah, J.)

(D.A. Mehta, J.)

sundar/-